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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

MICHAEL YOUNESSI and
PACIFICA HOLDINGS LLC, a
California Limited Liability Company;
Plaintiffs,

vs.

J.P. MORGAN CHASE BANK, N.A., a
Delaware Corporation;

U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE OF
THE WAMU MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
2007-OA4 TRUST; AND

DOES 1 THROUGH 100, INCLUSIVE.

Defendants.

SACV 12 - 02034 JST (JPRx)
CASE NO.:

VERIFIED COMPLAINT FOR
DAMAGES AND EQUITABLE
RELIEF

1. Declaratory Relief
2. Violation of 12 U.S.C. § 2605
3. Violation of 15 U.S.C. § 1692 et seq
4. Actual Fraud
5. Negligent Misrepresentation
6. Violation of Business & Professions Code §17200 et seq.
7. Cancellation of Void Contract
8. Demand for Accounting
9. Quasi Contract
10. Preliminary Injunction

DEMAND FOR JURY TRIAL

COMES NOW MICHAEL YOUNESSI and PACIFICA HOLDINGS, LLC,
("Plaintiffs"), by and through their counsel, for their Complaint against Defendants

1 J.P. MORGAN CHASE, N.A. (hereinafter "CHASE"), a Delaware Corporation, and
 2 the U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE
 3 CERTIFICATEHOLDERS OF THE WAMU MORTGAGE PASS-THROUGH
 4 CERTIFICATES SERIES 2007-OA4 TRUST, ("US BANK"), in its capacity as
 5 purported assignee of Plaintiffs' Deed of Trust, collectively "Defendants", who
 6 plead as follows:

7 **I. STATEMENT OF THE CASE**

8 1. Plaintiff, MICHAEL YOUNESSI alleges Defendants are third-party
 9 strangers to his mortgage loan and have no ownership interest entitling them to
 10 collect payment or declare a default. By hiding behind the complexities of the
 11 mortgage finance system, Defendants brazenly attempt to dupe Plaintiff (and
 12 millions of other American homeowners) into believing they have the right to
 13 collect on a debt in which US BANK has no ownership interest. In an attempt to
 14 further their fraudulent scheme and create the **air of propriety surrounding their**
 15 **debt collection efforts, Defendants have resorted to "papering the file" by**
 16 **fabricating a "Corporation Assignment of Deed of Trust," employing**
 17 **individuals who have no authority or personal knowledge of the facts to which**
 18 **they attest, and falsely representing to Plaintiff and to the Court they have the**
 19 **right to take Plaintiffs' Property away.** Not only is Defendants' conduct a
 20 *criminal violation* of California's Mortgage Fraud Statute, *Cal. Penal Code Section*
 21 *532(f)(a)(4)*¹, and an affront to long-standing property laws, but their reliance on
 22 fabricated and forged documents undermines the integrity of the judicial system.
 23 Through this action, Plaintiff seeks to stop Defendants' fraudulent practices,

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 25
 26
 27 ¹ *Cal. Penal Code* section 532(f)(a) provides that "a person commits mortgage fraud if, with the
 28 intent to defraud, the person does any of the following....(4) files or causes to be filed with the
 recorder of any county in connection with a mortgage loan transaction any document the person
 knows to contain a deliberate misstatement, misrepresentation, or omission."

1 discover the true holder in due course of his Promissory Note ("Note"), and
 2 determine the status of Defendants' claims.

3 **II. JURISDICTION, VENUE AND PARTIES**

4 1. This Court has original jurisdiction over the claims in this action based
 5 on 28 U.S.C. §§ 1331, 13433, 2201, 2202, 12 U.S.C. § 2605, 15 U.S.C. § 1692; and
 6 42 U.S.C. § 1983 which confer original jurisdiction on federal district courts in suits
 7 to address the deprivation of rights secured by federal law.²

8 2. This Court also has supplemental jurisdiction over the pendant state
 9 law claims because they form a part of the same case or controversy under Article
 10 III of the United States Constitution, pursuant to 28 U.S.C. §1367.

11 3. This Court has original jurisdiction over the claims in this action based
 12 on 28 U.S.C. § 1332 which confers original jurisdiction on federal district courts in
 13 suits between diverse citizens that involve an amount in controversy in excess of
 14 \$75,000.00.

15 4. The unlawful conduct, illegal practices, and acts complained of and
 16 alleged in this Complaint were all committed in the Central District of California
 17 and involved real property located in the Central District of California. Therefore,
 18 venue properly lies in this District, pursuant to 28 U.S.C. § 1391(b).

19 5. Plaintiff, MICHAEL YOUNESSI, is now, and at all times mentioned
 20 herein, an individual residing in the County of Orange.
 21
 22
 23

24 ² The Ninth Circuit instructs that in actions brought under 28 U.S.C. § 2201, district courts must
 25 first determine whether there is actual controversy within its jurisdiction by analyzing the factors
 26 enumerated in *Brillhart v. Excess Ins. Co.*, 36 U.S. 491 (1942). The *Brillhart* factors require the
 27 Court to (1) avoid needless determination of state law issues; (2) discourage litigants from filing
 28 declaratory actions as a means of forum shopping; and (3) avoid duplicative litigation. *Brillhart*,
 316 U.S. at 495; see also *Schafer v. Citimortgage* No. CV 11-03919, 2011 WL 2437267 (C.D.
 Cal. June 15, 2011). As held by the court in *Schafer*, this action does not involve a needless
 determination of state law issues, does not involve forum shopping, and is not duplicative
 litigation.

1 6. Plaintiff, PACIFICA HOLDINGS, LLC, is a California limited liability
2 company with its principal place of business, at all times mentioned herein, in the
3 County of Orange, State of California. PACIFICA has been vested in the Subject
4 Property by the recording of a Quitclaim Deed by MICHAEL YOUNESSI on
5 October 11, 2011 with the Orange County Recorder's Office.

6 7. At all times relevant to this action, Plaintiffs were and are the owners
7 and holders of legal title to the real Property commonly known as 1611 Cliff Drive,
8 Newport Beach, California, Orange County, State of California (the "Property") and
9 more aptly described as APN 049-221-08, Lot 3 in Block "A" of Tract No. 1219,
10 Cliff Haven, in the City of Newport Beach, County of Orange, California as per
11 Map recorded in Book 38, Page(s) 26 & 27, of Miscellaneous Maps in the Office of
12 the County Recorder of said County.

13 8. Lender Doe Defunct Defendant, Washington Mutual Bank, F.S.B.,
14 (hereinafter "WAMU"), was the original lender, however, is apparently defunct.

15 9. Defendant, J. P. MORGAN CHASE , N.A., a Delaware Corporation,
16 hereinafter referred to as "CHASE" is registered with the California Secretary of
17 State with its principal place of business located at 270 Park Avenue, New York,
18 New York. At all times "CHASE" purported to have authority to do business in
19 Orange County, California, and conducted business in Orange County on a regular
20 basis.

21 10. Defendant, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
22 FOR THE CERTIFICATEHOLDERS OF THE WAMU MORTGAGE PASS-
23 THROUGH CERTIFICATES SERIES 2007-OA4 TRUST, ("US BANK"), is a
24 National Association organized under the laws of the United States with its principal
25 place of business in Ohio. Plaintiffs are informed and believe the WAMU Mortgage
26 Pass-Through trust is organized under the laws of the State of New York and is
27 domiciled in the State of New York.

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1 11. Plaintiffs are ignorant of the true names and capacities of Defendants
2 sued herein as DOES 1 - 100 INCLUSIVE and, therefore, sue these Defendants by
3 such fictitious names. Plaintiffs will amend this Complaint to allege their true
4 names and capacities when ascertained. Plaintiffs are informed and believe and
5 based thereon allege, each of the fictitiously named Defendants are responsible in
6 some manner for the injuries to Plaintiffs alleged herein, and that such injuries, as
7 herein alleged, were proximately caused by such Defendants.

8 12. Whenever reference is made in this Complaint to any act of any
9 Defendant(s), that allegation shall mean that each Defendant acted individually and
10 jointly with the other Defendants.

11 13. Any allegation about acts of any corporate or other business Defendant
12 means the corporation or other business did the acts alleged through its officers,
13 directors, employees, agents and/or representatives while they were acting within
14 the actual or ostensible scope of their authority.

15 14. At all relevant times, each Defendant committed the acts, caused or
16 directed others to commit the acts, or permitted other to commit the acts alleged in
17 this Complaint. Additionally, some or all of the Defendants acted as the agent of
18 other Defendants and all of the Defendants acted within the scope of their agency if
19 acting as an agent of the other.

20 15. At all relevant times, each Defendant knew or realized that the other
21 Defendants were engaging in or planned to engage in the violations of law alleged in
22 this Complaint. Knowing or realizing that the other Defendants were engaging in or
23 planning to engage in unlawful conduct, each Defendant nevertheless facilitated the
24 commission of those unlawful acts. Each Defendant intended and did encourage,
25 facilitate, or assist in the commission of the unlawful acts, and thereby aided and
26 abetted the other Defendants in the unlawful conduct.

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1 III. INTRODUCTION

2 16. During the Mortgage Boom Era of 2002 to 2007, Wall Street investors
 3 looked to feed their insatiable and reckless greed for profit by tapping directly into
 4 the American Dream – home ownership. Mortgage lenders and investment banks
 5 aggressively lured the American people into predatory loans with teaser interest
 6 rates and into purchasing homes with inflated appraisals and under the promise that
 7 the booming real estate market would continue to boom. Wall Street took the soon
 8 to be toxic loans and bundled them into “Mortgage Backed Securities” through a
 9 process known as “Securitization.” These “securities” were then sold to investors in
 10 the form of certificates, whereby the investors became the “Certificateholders” of
 11 the securities that were to be fed by the toxic loans.
 12

13 17. Knowing that the predatory loans would soon default and turn into
 14 toxic assets, Wall Street placed their bets accordingly and bought exotic insurance
 15 products in the form of Credit Default Swaps.³ Thus, when the Mortgage Boom
 16 turned into a Mortgage Meltdown (which it did), they would stand to make even
 17 more profit when the mortgage insurance paid them out for their “losses.”
 18

19 ³ In 1995, JPMorgan created the Credit Default Swap (CDS). Essentially, a CDS is a form of
 20 insurance intended to protect the buyer of the policy in case the borrower defaults on the loan. If
 21 the borrower defaults, the buyer of the CDS receives a large payout for the cash value of the
 22 defaulted loan. The main difference between a traditional insurance policy and a CDS is that
 23 anyone can purchase a CDS, even those who have no direct “insurable interest” in the lender.
 24 CDSs were instrumental during the housing bubble because once the banks ran out of
 25 creditworthy borrowers, they had to turn to uncreditworthy “subprime” borrowers. To avoid losses
 26 from default, the banks moved these risky mortgages off their books by bundling them into
 27 “securities” and selling them to investors. To induce investors to buy these securities, the
 28 securities were then “insured” with credit default swaps. CDSs allowed investors to bet against
 the average American to default on their mortgage with little risk. CDS insurance was especially
 attractive to investors who had knowledge of the subprime mortgage industry, since they knew the
 likelihood of default on those loans was much higher. Notably, AIG Insurance Company (“AIG”),
 an insurance carrier who owned a considerable market share of these CDS policies, was unable to
 make good on these policies after the housing bubble burst resulting in AIG seeking a
 government bailout. See Justin Fox, *Why the Government Wouldn't Let AIG Fail?* TIME Business
 (September 16, 2008) <http://www.time.com/time/business/article/0.8599.1841699.00.html>. Thus,
 in the end, it was the American taxpayer who bore the burden of these CDSs.

1 18. However, in their rush to “securitize” the predatory loans, Wall Street
2 failed to actually follow its own rules and regulations, creating the instant situation
3 where the securities are not actually backed by any mortgages at all. Under the
4 standard model, the promissory notes were *supposed* to be sold and transferred into
5 a trust pool (“Securitized Trust”) that holds the promissory notes as collateral on the
6 securities bought by investors (“Certificateholders”). These “true sales” allow the
7 original lenders to move the notes off their books, eliminating the need to maintain
8 capital-adequacy reserves against default. The purpose of securitizing collateral
9 debt obligations was to provide a large supply of money to lenders for originating
10 loans, and to provide investment to bond holders – which were expected to be
11 relatively safe.

12
13 19. The Securitized Trusts, if ever formed properly, are subject to and
14 governed by (1) the Pooling and Servicing Agreement; (2) the Mortgage and Loan
15 Agreement; (3) the 424B5 Prospectus; (4) the common law trust rules of Delaware
16 or New York, depending on its origin, and (5) Internal Revenue Code section 860A
17 through 860G, better known as the Real Estate Mortgage Investment Conduit
18 (“REMIC”) rules.

19 20. An essential aspect of the mortgage securitization process is that the
20 Trust must obtain and maintain good title to the mortgage loans comprising the pool
21 for that certificate offering. This is necessary in order for the Trustee of the
22 purportedly Securitized Trust to be legally entitled to enforce the mortgage loans in
23 case of default. In addition to other required documentation to complete the
24 Collateral File of any given loan, two documents relating to each mortgage loan
25 must be validly transferred to the Trust as part of the securitization process – the
26 promissory note and the security instrument (deed of trust or mortgage). In this
27 case, on information and belief, neither document was validly transferred.
28

1 21. Here, Plaintiff alleges the “true sales” never took place due to the
2 failure to follow the basic legal requirements for the transfer of a negotiable
3 instrument and thereby, US BANK did not acquire any legal, equitable, and
4 pecuniary interest in Plaintiff’s credit or, has no secured or unsecured right, title, or
5 interest in Plaintiff’s Note and Mortgage, and thus, no right to collect mortgage
6 payments, demand mortgage payments, or report derogatorily against Plaintiff’s
7 credit.⁴

8 21. Plaintiff further alleges that, on information and belief, the WAMU
9 MORTGAGE PASS-THROUGH TRUST (hereinafter “WAMU TRUST”) that
10 claims to own Plaintiff’s Note and Mortgage has been dissolved due to the
11 disbursement and receipt of mortgage insurance payouts to US BANK and the
12 Certificateholders (including, but not limited to, Credit Default Swaps and other
13 mortgage insurance products). As a result of these mortgage insurance payouts, US
14 BANK has been paid in full on Plaintiff’s debt obligation.

15 22. Nonetheless, US BANK attempts to take advantage of the complex
16 structured finance system to defraud yet another homeowner. Plaintiff anticipates
17 that US BANK will seek a Court-sanctioned bailout by submitting a blatantly
18 fabricated “Assignment” via a Request for Judicial Notice, thereby committing
19 fraud on the Court, and attempting to further mislead Plaintiff into believing that US
20 BANK is his actual creditor, and is entitled to enforce his obligation.
21

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25 ⁴ Plaintiff’s allegations are supported by the recent ruling of the Massachusetts Supreme Judicial
26 Court in *U.S. Bank vs. Ibanez*, SJC-10694, 2011 WL 38071. In *Ibanez*, the court invalidated two
27 foreclosure sales, finding that the lower court did not err in concluding that the securitization
28 documents submitted by U.S. Bank and Wells Fargo failed to demonstrate that they were the
holders of the mortgages. The court rejected the banks’ argument that the mortgages were
transferred via the applicable Pooling and Servicing Agreement and made clear that, to foreclose,
the banks must prove a complete and unbroken chain of title from origination to securitization
trust in full compliance of the PSA, i.e. establish ownership of the mortgage.

23. Plaintiff does not dispute that he owes money on his mortgage obligation.⁵ Rather, Plaintiff disputes the amount owed, and seeks the Court's assistance in determining who the holder in due course is of his Note and Deed of Trust, and specifically what rights, if any, US BANK has to claim a secured or unsecured interest in Plaintiff's Note or Mortgage.

24. Plaintiff's information and belief is based on (1) a title report and analysis of the Property's county records; (2) direct written and oral communication with Defendants; (3) his counsel's research, experience, and extensive review of depositions, case law, amicus briefs, correspondence, news articles, reports, and publicly available securitization documents and practices; (4) a review of purported "Corporation Assignment of Deed of Trust" signed by "Beverly Brooks"; and (5) an audit of US BANK's filings with the Securities and Exchange Commission ("SEC"), including US BANK's Prospectus and the Pooling and Servicing Agreement ("PSA").

25. On or about April 2, 2007, Plaintiff YOUNESSI, obtained a 30-year, Adjustable Rate, Negative Amortization loan funded by Doe Defunct Defendant Lender "WAMU" in the amount of \$1,207,500.00. Mortgage Electronics Registration Systems, Inc., (hereinafter "MERS"), was named as the Beneficiary on the Deed of Trust.

26. Plaintiff alleges and believes thereon that on or around the time of origination of his loan, "WAMU" attempted to securitize and sell his loan to another entity or entities. **That entity was *not* US BANK or the WAMU TRUST.**

⁵ However, simply because Plaintiff does not dispute this fact, the Court should not condone US BANK and BOFA's fraudulent and predatory mortgage servicing practices and allow them to collect on money they were not owed. Simply put, the Court should not allow US BANK or BOFA to trample over 200 years worth of well-settled property laws just because Plaintiff "owes somebody the money".

1 27. Plaintiff alleges on information and belief that CHASE never sold,
2 transferred, or granted his Note or Mortgage to the Sponsor, Depositor, or US
3 BANK and that US BANK is merely a third-party stranger to the loan transaction.
4 Furthermore, Plaintiff alleges that none of the Defendants or Doe Defendants can
5 demonstrate or document that Plaintiff's Note was ever properly endorsed, and
6 transferred to US BANK. In fact, Plaintiff has requested that CHASE verify and
7 validate his debt. Although this information should be readily available to any
8 mortgage servicer, CHASE has failed to provide any evidence to verify the owner
9 and amount of Plaintiff's Mortgage or validate the claim to Plaintiff's debt
10 obligation.

11 28. The parties involved in the alleged Securitization and transfer of
12 Plaintiff's Note and Mortgage failed to adhere to section 2.01 of the PSA, which
13 requires that Plaintiff's Note and Mortgage to be properly endorsed, transferred,
14 accepted, and deposited with Securitized Trust (or its custodian) on or before the
15 "closing date" indicated on the Prospectus. The "closing date" is the date by which
16 all of the Notes and Mortgages must be transferred into the WAMU Trust. The
17 failure to do so results in the Note and Mortgage not being part of the WAMU Trust
18 res, such that it is not a loan that either WAMU or CHASE can attempt to collect on.

19 29. On or about August 8, 2012, "Colleen Irby", purportedly a "Vice
20 President" for CHASE allegedly executed a document purporting to be a
21 "Corporation Assignment of Deed of Trust" ("Assignment"), in which he/she
22 intentionally misrepresented to Plaintiff in writing that US BANK had acquired an
23 interest in his Note and Mortgage, and that CHASE had endorsed, transferred, and
24 negotiated his Note to US BANK. In fact, no such transfer of interest took place, a
25 fact that "Colleen Irby", US BANK and CHASE were aware of. See **EXHIBIT**
26 **"A"**, attached hereto is a true and correct copy of the Assignment, executed on
27
28

1 August 8, 2012. Plaintiff specifically disputes the contents and authenticity of this
2 document.

3 30. Plaintiff alleges the only recorded "Assignment" was executed after the
4 closing date of the trust. The dubious "Assignment" raises numerous red flags and
5 further demonstrates Plaintiff's Note and Mortgage were not deposited into the
6 Trust by the closing date, and the "Assignment" was fabricated in attempt to "paper
7 over" the fatal securitization defects.

8 31. The failure to deposit Plaintiff's Note into the CHASE Funding Trust
9 before the closing date is a violation of the PSA and of New York trust law.
10 Consequently, the WAMU TRUST cannot claim any legal or equitable right, title,
11 or interest in Plaintiff's Note and Mortgage since US BANK cannot take any action
12 which is not authorized by the Securitization agreements that created and govern the
13 WAMU TRUST.

14 32. Plaintiff does not allege or assert that he is a beneficiary or party to the
15 PSA. Rather, Plaintiff alleges that the failure to securitize his Note makes it
16 impossible for US BANK, the WAMU TRUST, and/or CHASE to claim, allege or
17 assert that it was assigned, transferred or granted Plaintiff's Note or Mortgage, or
18 any interest therein, in any matter whatsoever. Plaintiff also alleges that the failure
19 to securitize his Note and Mortgage has resulted in an unperfected lien that
20 Defendants cannot enforce in any manner whatsoever.⁶
21

22
23 ⁶ These allegations are identical to those brought by the Nevada Attorney General against Bank of
24 America, BAC Home Loans Servicing and Recontrust, in which Attorney General Catherine
25 Cortez Masto alleges that these entities engaged in unlawful and deceptive practices by
26 misrepresenting to homeowners that they had authority to foreclose despite the fact that there were
27 fatal deficiencies in transfers to the securitization Trusts. *State of Nevada vs. Bank of America, et*
28 *al.*, No. 3:11-cv-00135-RCJ, (C.D. Nev August 30, 2011). The AG concludes that, "[t]hese are not
mere technicalities. The PSA's spelled out specific procedures in order to ensure a proper
transfer, protect the Trusts as the holders in due course, and avoid subjecting the Trusts to
taxation. In addition, borrowers need to know the actual holders of their mortgages so that, for
example, they can investigate and assert available defenses in foreclosures, including that the
agent of the trustee lacks authority or standing under the Note" *Id.* at ¶ 146.

1 33. Plaintiff relied on US BANK and/or CHASE's misrepresentations and
2 has been damaged in the following ways: (1) multiple parties may seek to enforce
3 his debt obligation against him; (2) the title to his home has been clouded and
4 rendered unmarketable, as any would-be buyer of Plaintiff's home will find
5 themselves in legal limbo, unable to know with any certainty whether they can
6 safely buy Plaintiff's home or get title insurance; (3) he has been paying the wrong
7 party for an undetermined amount of time and overpaid in interest that was over
8 calculated; (4) he is unable to determine whether he sent his monthly mortgage
9 payments to the right party; and (5) he has expended significant funds to cover the
10 cost of attorney's fees and related costs.

11 34. In addition to seeking compensatory, consequential, punitive, and other
12 damages, Plaintiff seeks Declaratory Relief as to whether the Deed of Trust
13 (Mortgage) secures any obligation of Plaintiff in favor of US BANK or CHASE,
14 such that either of them can collect Plaintiff's mortgage payments, demand payment
15 or engage in debt collection activities.

17 **IV. STATEMENT OF FACTS**

18 35. Defendants and each of them, and their agents, officers, employees, and
19 affiliated or associated parties have engaged in and continue to engage in a pattern
20 of unlawful or unfair predatory real estate lending practices causing victims of their
21 actions, including Plaintiffs herein, to potentially lose its Property through the
22 foreclosure process because of predatory lending practices on the part of Defendants
23 that consist of, but not limited to (a) failing to provide proper disclosures as required
24 by state law, (b) failing to disclose the true terms of the loan, (c) falsifying loan
25 documentation to inflate, and actually create the income of prospective borrowers;
26 (d) charging excessive closing cost fees to Plaintiff, YOUNESSI, that have no
27 reasonable value basis to the services actually performed by Defendants; (e)
28 misleading Plaintiff with regards to a loan modification; and (f) failing to comply

1 with California State laws as they govern foreclosure procedures on real property
2 situated within the State of California.

3 36. Plaintiffs are informed and believe that Lender Defendants are financial
4 institutions that were paid a fee to pose as a residential mortgage lender, when in
5 fact the actual lender and underwriter were other parties whose identities and receipt
6 of fees and profits were withheld from Plaintiff, YOUNESSI, at loan closing.

7 37. On or about April 2, 2007, Plaintiff, YOUNESSI, obtained a 30-year,
8 Adjustable Rate, Negative Amortization loan funded by Doe Defunct Defendant
9 Lender "WAMU" in the amount of \$1,207,500.00. During the negotiation process,
10 Plaintiff contacted said lender at its office located at Irvine, California, by and
11 through its employees/agents/wholesale mortgage correspondents, all who acted
12 within the course and scope of their duties and with the full consent and authority to
13 do so given by "WAMU", to obtain information concerning purchase loan financing
14 for the Subject Property. Plaintiff engaged the services of said lender to obtain a
15 loan, and in so doing, entered in good faith, into a written contract with lender.

16 38. Agents/employees of "WAMU", all acting within the course and scope
17 of their duties and with the full consent and authority to do so, given by WAMU,
18 had Plaintiff sign a blank loan application. Those same agents/employees of
19 "WAMU" then filled out the loan application for Plaintiff and in so doing attributed
20 to Plaintiff's substantially inflated income. The agents/employees of "WAMU"
21 falsified Plaintiff's income deliberately, purposefully, with the express intent to
22 deceive and without Plaintiff's knowledge or consent. Defendants then processed
23 the loan with this falsified income. "WAMU" then funded the loan using their
24 "Stated Income/Quick Qualifier" underwriting standards which was a sham and a
25 farce. Needless to say, all government, and particularly FHA loans are full income
26 documentation loans only. Plaintiff's actual income was never used during their
27 funding and underwriting process. Defendants did have Plaintiff sign an IRS 4506-T
28 Verification of Tax Transcripts form, so they knew Plaintiff's real income. This

1 practice caused the demise of many a lender in the country. Unknown to Plaintiff,
2 Defendant and its employees/agents, induced the Plaintiff into a transaction that did
3 not and could not meet normal underwriting standards for a residential mortgage.
4 When a true analysis of the income verses the amount of the loan was conducted, it
5 was discovered that Lender Defendants knew Plaintiff would never have qualified
6 for the loan using his true income. Therefore, Lender Defendants, in a further
7 conspiracy each with each other, created false income and had Plaintiff sign a blank
8 1003 residential loan application using such fabricated income, that they later
9 inserted into the application, and "approved" Plaintiff for this predatory loan that
10 actually left Plaintiff with *negative* income each month. Lender Defendants posed as
11 conventional mortgage lenders thus leading Plaintiff to reasonably believe Lender
12 Defendants had an interest in the success (repayment of the loan) of the transaction
13 that Plaintiff was induced to believe was being executed at the time of the "closing"
14 of the transaction.

15 39. In fact, lender and the trustee on the Deed of Trust had no financial
16 stake (i.e., liability) in the transaction and no interest other than obtaining Plaintiff's
17 signature on the loan that could ever be repaid, contrary to representations and
18 assurances from the conspiring participants in this scheme. The original note was for
19 \$1,207,500. There was no "lender" involved in the closing in the sense of an entity
20 performing due diligence and evaluation pursuant to national standards for
21 underwriting and evaluating risk of loaning money in a residential loan closing.
22 Their purpose was solely to collect fees, rebates, kickbacks and profits that were
23 never disclosed to Plaintiff and have only recently been discovered by the Plaintiff
24 through consultation with experts in securitization of residential mortgage loans, and
25 diligent research including the filings of some parties with the Securities and
26 Exchange Commission which disclose the normal manner of operating this scheme.

27 40. In or around February 2009, Plaintiff sought assistance with modifying
28 his mortgage from various mortgage loan counseling services. These services are

1 experts in securitization of residential mortgage loans. Through an audit of
2 Plaintiff's mortgage and diligent research into the filings of some parties with the
3 Securities and Exchange Commission, it was discovered Plaintiff was charged
4 excessive fees, including a "Yield Premium Spread". Further, it was discovered the
5 Defendants had engaged in the aforementioned scheme to collect fees, rebates,
6 kickbacks and profits, at the expense of Plaintiff. Plaintiff was previously unaware
7 of these problems because employees of Defendants had told him otherwise, or
8 failed to disclose this information to Plaintiff. Further, Plaintiff was not in a
9 position to know this information as employees of Defendants were in a position to
10 control all information given to Plaintiff and when Plaintiff asked questions,
11 employees of the Defendants either misled or simply omitted the actual facts.

12 41. Through continuous research into the securitization of Plaintiff's
13 mortgage, in an effort to determine the actual legal holder of Plaintiff's mortgage
14 obligation, Plaintiff has further discovered Defendants have never transferred
15 Plaintiff's mortgage to the WAMU TRUST, of which "US BANK" purports to be
16 the Trustee, as required by the Pooling Service Agreement, the "PSA" set up by
17 Defendants and which purported to contain Plaintiff's mortgage. As a result US
18 BANK has no actual legal interest in Plaintiff's mortgage obligation.

19 42. Plaintiff relied upon the training and expertise of professionals who
20 know the real estate products currently being offered by banks and other lending
21 institutions to offer the best loans for individuals, based upon their particular
22 circumstances.

23 43. Plaintiff relied upon the superior knowledge, training and expertise of
24 "WAMU'S" agents/employees who repeatedly held themselves out to be experts in
25 the real estate loan products offered by banks and other lending institutions, to offer
26 the best loan for Plaintiff, based upon Plaintiff's particular circumstances.

27 44. Plaintiff was offered this loan which was doomed for foreclosure from
28 the very beginning.

1 45. While the terms of the loan was discussed verbally with the Plaintiff, the
2 loan documents themselves were never explained as he was rushed into signing the
3 final documents, and he relied upon the assurances of Defendants that the terms set
4 forth in the documents mirrored the verbal discussions conducted concerning the
5 specific terms of the loan. They did not.

6 46. The language which Defendants used in the promissory note was
7 incomprehensible, filled legalese and filled with unintelligible language, all
8 designed to confuse the average borrower, such as Plaintiff in order to obscure his
9 rights and the unconscionableness of the contract. It was designed to insure that
10 average homeowners, such as the Plaintiff, did not comprehend the true nature of
11 the agreement and the extraordinary costs that it contained. As a result, Plaintiff
12 relied upon the agents of Defendants and all the Loan Disclosures.

13 47. As previously stated, the Plaintiff's loan was as a result of Defendants
14 obtaining a stated income only. Said Defendants then purposely deceived the
15 Plaintiff by telling him he could afford this loan. These are facts which Defendants,
16 through their agents/employees, conspired to conceal and attempted to conceal from
17 Plaintiff. Plaintiff believed he could afford the amounts and that he would be able to
18 liquidate or extinguish the Promissory Note by the date stated in the Promissory
19 Note. Plaintiff further believed that the payments during the first portion of the
20 repayment schedule would further accomplish this. Combined with the falling real
21 estate values, it further made it totally 100% impossible to get out of a situation that
22 he had been coerced, and tricked into.

23 48. Defendants prepared and tendered to Plaintiff, along with the other loan
24 documents it prepared and tendered, a Deed of Trust (the "Deed") in the amount of
25 \$1,207,500.00 in which Defendant "WAMU" was listed as the lender.

26 49. The mortgage payments due on this loan extended to Plaintiff continue
27 to pose a hardship. Plaintiff began attempting to again refinance or modify the loan
28 terms. All attempts to discuss this issue with Defendants were rejected or ignored.

1 Plaintiffs want to keep this Property and YOUNESSI doesn't understand, since he
2 does qualify for a loan modification, why wouldn't Defendants consider a
3 permanent loan restructure on this Property. Some of the answers Defendants have
4 given the Plaintiff for their rationale in doing this and declining his permanent loan
5 modification is ludicrous. After receiving billions of dollars of the financial bailout
6 money from the US Government, it would seem like they would be more interested
7 in providing assistance on troubled loans to the homeowners, especially ones like
8 this, and where the homeowner have "clearly demonstrated capability and
9 responsibility."

10 50. Plaintiffs are informed and believe, and allege thereon, "CHASE"
11 acquired or merged with "WAMU" in or around June 2008, and apparently took
12 over the loan from "WAMU", and, therefore, incurs all such liability for "WAMU"
13 as to the allegations in this Complaint.

14 51. Under California law, successor liability may be imposed on a
15 corporation for the debts and liabilities of its predecessor in any of the following
16 circumstances: (1) the purchaser expressly or impliedly agrees to such assumption,
17 (2) the transaction amounts to a consolidation or merger of the two corporations, (3)
18 the purchasing corporation is merely a continuation of the selling corporation, or (4)
19 the transaction is entered into to escape liability for debts. *Ray v. Alad Corp.* (1977)
20 19 Cal.3d 22, 28, 136 Cal.Rptr. 574; *Westoil Terminals Co. V. Harbor Ins. Co.*
21 (1999) 73 Cal.App.4th 634, 638; *Franklin v. USX Corp.* (2001) 87 Cal.App.4th 615,
22 620, 105 Cal.Rptr.2d 11.

23 52. "It is the general rule that a corporation formed by consolidation or
24 merger is answerable for all the debts and liabilities of the constituent corporations,
25 whether they arise ex contractu or ex delicto." *Moe v. Transamerica Title Ins. Co.*
26 (1971) 21 Cal.App.3d 289, 304. Once the merged entity holds the liabilities of its
27 predecessor, it is axiomatic that it cannot extinguish through contracts with one
28 party debts or obligations it owes to a third party who is a stranger to the contract.

53. "CHASE" and/or "US BANK" claim to be the successors-in-interest to "WAMU" and, therefore, incur all such liability for "WAMU" as to the allegations in this Complaint.

54. On August 9, 2012, "CHASE" initiated non-judicial foreclosure proceedings against the Property and recorded, or caused to be recorded, a Notice of Default and subsequently a Notice of Trustee's Sale. Also on August 9, 2012, a "Beverly Brooks", purporting to act as a "Vice President" of "CHASE" executed a Corporation Assignment of Deed of Trust purportedly transferring all beneficial interest in the Property to Defendant "US BANK". Defendants have scheduled a trustee sale for December 7, 2012, while this action is pending.

55. If the foreclosure is allowed to take place, it will be unlawful for myriad reasons, as a matter of law, and Plaintiffs will seek to set aside the foreclosure.

V. THE FABRICATED ASSIGNMENT OF DEED OF TRUST IS A FRAUDULENT LIEN THAT CONVEYED NO INTEREST TO US BANK

56. On August 9, 2012, US BANK and/or CHASE caused the Assignment to be recorded with the County of Orange. The Assignment alleged that for "value received" CHASE granted, assigned, and transferred to US BANK all beneficial interest in the Deed of Trust. The Assignment was purportedly signed by "Colleen Irby" as the "Vice President" of CHASE. Plaintiff alleges that no such transfer ever occurred, and "Colleen Irby" is not a "Vice President" of CHASE.

57. Plaintiff alleges "Colleen Irby" is an individual who simply signs thousands of property record documents without any legal or corporate authority whatsoever.⁷

⁷ A recent "60 Minutes" television news segment reported on the epidemic of "phony" and "forged" documents used to evict homeowners, including the various different and forged signatures of "Linda Green" added to thousands of foreclosure documents filed in foreclosure proceedings all over the Country, available at <http://www.youtube.com/watch?v=UdeFyPC5MNI>. Ms. Green was interviewed by "60 Minutes" and admitted that her signature was forged by many

1 58. In fact, "Colleen Irby" is not even an employee of CHASE, but rather is
2 a Section Manager for California Reconveyance, the foreclosing trustee. Thus, the
3 Assignment was fraudulently executed without CHASE's knowledge or
4 authorization.

5 59. "Colleen Irby" was never, in any manner whatsoever, appointed as a
6 "Vice President" by the Board of Directors of CHASE, as required by CHASE's
7 corporate by-laws and an adopted corporate resolution by the Board of Directors of
8 CHASE. For that reason, "Colleen Irby" never had, nor has, any corporate or legal
9 authority from CHASE, or the lender's successors and assigns, to execute the
10 purported "Assignment."⁸ This was an intentional act undertaken by US BANK
11 and/or CHASE, done knowingly with the specific intent that the consequences of
12 their actions be brought to fruition, which they have as evidenced by the instant debt
13 collection activities.

14 60. The "Assignment" is a fraudulent lien claim, and the execution, filing,
15 and recordation of the document was created for the purpose of facilitating and
16 aiding and abetting the illegal, deceptive, and unlawful collection of Plaintiff's
17 mortgage payments, as well as engaging in other debt collection activities.

18 61. Plaintiff further alleges any amount allegedly owed under the Note is
19 subject to equitable offset by the actual, consequential, special, and punitive
20

21
22 DocX employees who were paid only \$10 an hour and required to forge 4,000 documents a day.
23 These individuals are now known as "robo-signers".

24
25 ⁸ The instant case is analogous to *Kingman Holdings, LLC v. Citimortgage, Inc. and Mortgage*
26 *Electronic Registration Systems, Inc.*, WL 1883829 (E.D. Tex. 2011) ("*Kingman*"), where the
27 court denied a motion to dismiss with similar causes of action as those that are pled here on the
28 basis that the plaintiff had adequately challenged the signatory's alleged title as "Vice President"
of MERS. The *Kingman* court held that the plaintiff had adequately pled that the assignment
executed by Nate Blackstun as "Vice President" on behalf of MERS, was void because Blackstun
was not actually appointed by MERS to be its Vice President.

1 damages owed to Plaintiff from Defendants, which amount is currently unknown,
2 but will be determined upon conducting discovery. Plaintiff believes this amount
3 will be in excess of the amount of his obligation.

4 62. Attempting to "assign" or transfer a Deed of Trust by itself, as
5 Defendants did here, does not allow enforcement of Plaintiff's Note and Mortgage.
6 As alleged herein, Plaintiff's Note was not properly negotiated, endorsed, and
7 transferred US BANK who seek to cause its purported authorized agent(s) to collect
8 mortgage payments and engage in other unlawful collection practices.

9 63. *California Commercial Code* section 3301 limits a negotiable
10 instrument's enforcement to the following:

11 "Person entitled to enforce" an Instrument means (a) the
12 holder of the instrument, (b) a nonholder in possession of
13 the instrument who has the rights of a holder, or (c) a person
14 not in possession of the instrument who is entitled to enforce
15 subdivision (d) of Section 3418. A person may be a person
16 entitled to enforce the instrument even though the person is
17 not the owner of the instrument or is in the wrongful possession
18 of the instrument.
19

20 64. On information and belief, none of the Defendants were/are present
21 holders in due course of Plaintiff's Note such that they can enforce Plaintiff's
22 obligation and demand mortgage payments.

23 65. On information and belief, Defendants were not, and are not, a
24 nonholder in possession of Plaintiff's Note who has rights of the holder.

25 66. If there is a holder in due course of Plaintiff's Note at issue, pursuant to
26 *California Commercial Code* section 3301, et seq. and/or the PSA, it is the entity

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28

1 that can establish a pecuniary, legal, and equitable interest in the Property, and
 2 provide an unbroken chain of title to Plaintiff's Note and Mortgage.⁹

3 67. On information and belief, none of the Defendants were/are entitled to
 4 enforce Plaintiff's Note pursuant to § 3309 or subdivision (d) of § 3418.

5 68. Plaintiff alleges that, prior to demanding mortgage payments from
 6 Plaintiff, none of the Defendants or Doe Defendants had, nor presently have, a
 7 secured or unsecured legal, equitable, or pecuniary interest in Plaintiff's Note and/or
 8 Deed of Trust as required under California law – irrespective of who is actually in
 9 physical possession of Plaintiff's Note.

10 69. Plaintiff alleges that, on information and belief, US BANK, CHASE
 11 and/or its agents are fraudulently enforcing a debt obligation in which they have no
 12 pecuniary, equitable or legal interest. Thus, US BANK's and CHASE's conduct is
 13 part of a fraudulent debt collection scheme.
 14

15 ///

16
 17
 18 ⁹ The testimony of Linda DeMartini, a 10-year litigation manager for Countrywide, in *In Re*
 19 *Kemp*, Case No. 08-18700-JHW, (Bankr., D. N.J. November 16, 2010) (for publication) exposed
 20 the shoddy handling of mortgage notes and deeds of trust of securitized mortgages required to
 21 perfect "holder in due course" status. In that case, Linda DeMartini described how Countrywide
 22 failed to adhere to the most rudimentary of securitization procedures, such as transferring the
 23 original promissory note to the trusts that had purchased the loans, as required under the pooling
 24 and servicing agreement. Ms. DeMartini testified that it was standard practice for Countrywide to
 25 warehouse the original mortgage notes, which were stored in Simi Valley, California, despite
 26 securitization contracts that required the notes to be physically transferred to sponsors, trustees or
 27 custodians of the securitized trusts. The findings in court decisions all over the Country, news
 28 stories, attorneys generals' complaints, and state and federal investigations reveal that business
 practices like Countrywide's were common place and like Countrywide, most lenders failed to
 properly comply with protocols required to properly securitize mortgage loans. Ms. DeMartini's
 testimony has been corroborated by Abigail Field of CNN, who reviewed foreclosures filed in two
 New York counties between 2006 and 2010 in which Bank of New York was foreclosing on
 behalf of a Countrywide securitization trust and found that none of the 104 loans that were
 examined were endorsed by Countrywide: "...If the lack of endorsement on these notes is typical –
 and 104 out of 104 suggests it is – the problem occurs across Countrywide securities." See
 Abigail Field, *At Bank of America, More Incomplete Mortgage Docs Raise More Questions*, Fort.,
 (June 3, 2011), <http://finance.fortune.cnn.com/2011/06/03/at-bank-of-america-more-incomplete-mortgage-docs-and-more-questions/>.

1 **VI. PLAINTIFF'S LOAN MODIFICATION AND DEBT VALIDATION**
2 **EFFORTS**

3 70. In or about 2009, Plaintiff hired a third party to help him obtain a loan
4 modification. No action was taken by the lender.

5 71. In or about 2011, Plaintiff hired another third party to help him obtain a
6 loan modification but once again, lender did not take any action.

7 72. Plaintiff was never offered a loan modification.

8 73. In an effort to verify and validate his debt, Plaintiff sent a Qualified
9 Written Request letter on or around May 25, 2012, pursuant to Real Estate
10 Settlement Procedures Act, 12 U.S.C. 2605(e), in which he requested that the
11 purported servicer (CHASE) provide, among other things, "The name, address,
12 name of a contact person and telephone number of the current holder in due course
13 and owner of the mortgage note." 12 U.S.C. § 2605(e) requires that the servicer
14 provide this information and respond to a written request within 60 days of receipt.

15 **VII. PLAINTIFF HAS SUFFERED, AND CONTINUES TO SUFFER,**
16 **SIGNIFICANT MONETARY, LEGAL, AND EQUITABLE DAMAGES**

17 74. The conduct described above by US BANK and CHASE was malicious
18 because Defendants knew that they were not acting on behalf of the current
19 pecuniary beneficiary of the Note and Mortgage. However, despite such
20 knowledge, said Defendants continued to demand and collect Plaintiff's mortgage
21 payments.

22 75. Defendants engaged and are engaging in a pattern and practice of
23 defrauding Plaintiff, in that, on information and belief, during the entire life of the
24 mortgage loan, Defendants failed to properly credit payments made, incorrectly
25 calculated interest on the accounts, and failed to accurately debit fees.

26 76. On information and belief, at all times material, US BANK and
27 CHASE had and have actual knowledge that Plaintiff's accounts were not accurate,

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1 but that the Plaintiff would continue to make further payments based on Defendant's
2 inaccurate accounts.

3 77. On information and belief, Plaintiff made payments based on the
4 improper, inaccurate, and fraudulent representations as to Plaintiff's accounts.

5 78. As a direct and proximate result of the actions of the Defendants set
6 forth above, Plaintiff overpaid in interest.

7 79. As a direct and proximate result of the actions of the Defendants set
8 forth above, Plaintiff's credit and credit score have been severely damaged.
9 Specifically, because of the derogatory credit reporting on his credit report by US
10 BANK and/or CHASE, Plaintiff is unable to refinance out his present loan, buy
11 another property or sell his home.

12 80. As a direct and proximate result of the actions of the Defendants set
13 forth above, the title to the Plaintiffs' home has been slandered, clouded, and its
14 salability has been rendered unmarketable.

15 81. As a direct and proximate result of the actions of the Defendants set
16 forth above, Plaintiff does not know who the current beneficiary of his Note and
17 Mortgage actually is, such that he is now subject to double financial jeopardy.

18 82. As a direct and proximate result of the actions of the Defendants set
19 forth above, *multiple* parties can attempt to enforce Plaintiff's debt obligation.

20 83. The conduct of US BANK, CHASE and one or more of the Doe
21 Defendants has led to the imminent loss of Plaintiffs' home and to pecuniary
22 damages. The pecuniary damages include, but are not limited to, the costs of over-
23 calculation and overpayment of interest, the costs of repairing Plaintiff's credit, the
24 reduction and/or elimination of Plaintiff's credit limits, the costs associated with
25 removing the cloud from his Property title and attorneys' fees, in an amount to be
26 proven at trial.
27
28

84. The conduct of US BANK, CHASE, and one or more of the Doe Defendants' was malicious because Defendants did not know the identity of the current and true beneficiary of Plaintiff's Note and Deed of Trust, yet they intentionally and fraudulently covered up this defect by wrongfully recording a fraudulent Assignment, which would enable them to *illegally and fraudulently* collect on Plaintiff's debt, and which in essence has rendered the title to the Property unmarketable.

85. The title to Plaintiff's Property has been rendered unmarketable and unsalable because of the possibility of multiple claims being made against Plaintiff's debt and underlying security (the Subject Property). If the Assignment of Deed of Trust is not cancelled and set aside, Plaintiff will be incurably prejudiced. Plaintiff will be denied the opportunity to identify and negotiate with his *true creditor* and exercise his right to verify and validate his debt.

86. Plaintiff has offered to and is ready, willing, and able to unconditionally tender his obligation.¹⁰

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¹⁰ Case law makes clear that Plaintiff is only required to allege a credible offer of tender, not actually tender. *Alicia v. GE Money Bank*, No. C 09-00091 SBA, 2009 WL 2136969 at *3 (N.D. Cal. July 16, 2009) ("...debtor must allege a credible tender of the amount of the secured debt..."). Moreover, tender is not required when the owner's action attacks the validity of the underlying debt because the tender would constitute an affirmation of the debt. *Sacchi v. Mortgage Electronic Registration Systems, Inc.*, No. CV 11-1658 AHM, 2011 WL 2533029 (C.D. Cal. June 24, 2011), at *16 (emphasis added) (citing *Onofrio v. Rice*, 55 Cal. App. 4th 413, 424 (1997); *Stockton v. Newman*, 148 Cal. App. 2d 558, 564 (1957). See also, *Foulkrod v. Wells Fargo Financial California Inc.*, No. CV 11-732-GHK (AJWx) (C.D. Cal. May 31, 2011) ("...requiring plaintiff to tender the amount due on his loan at this time would be illogical and inequitable given that he disputes that Wells Fargo has any rights under the loan.") In light of the fact that Plaintiff contests the legitimacy of the Defendants' claim to the mortgage payments, it would be illogical and inequitable to require Plaintiff to actually tender the amount given that Plaintiff disputes whether the Defendants have any rights under the loan. See *Onofrio v. Rice*, 55 Cal. App. 4th 413, 424 (1997).

FIRST CAUSE OF ACTION-DECLARATORY RELIEF:
TO DETERMINE STATUS OF DEFENDANTS' CLAIMS

[28 U.S.C. §§ 2201, 2202]

[Against All Defendants and Doe Defendants]

87. Plaintiffs hereby incorporate by reference reach and every one of the preceding paragraphs as if the same were fully set forth herein.

88. Section 2201(a) of Title 28 of the United States Code states:

In a case of actual controversy within its jurisdiction, except with a respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 5050 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

89. Section 2202 of Title 28 of the United States Code states:

Further necessary or proper relief based on declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

90. Plaintiff alleges that neither US BANK nor CHASE has a secured or unsecured legal, equitable, or pecuniary interest in the lien evidenced by the Deed of

1 Trust and that its purported assignment has no value since the Deed of Trust is
2 wholly unsecured.

3 91. On or about August 9, 2012, Defendants claim they secured an
4 enforceable interest in, and perfected lien against, the Plaintiff's Note, Deed of Trust
5 and Property.

6 92. Thus, the competing allegations made by Plaintiff above establish that a
7 real and actual controversy exists as to the respective rights of the parties to this
8 matter, including ownership of the Property.

9 93. Accordingly, Plaintiff requests the Court make a finding and an issue
10 appropriate orders stating that none of the named Defendants or Doe Defendants,
11 have any right or interest in Plaintiff's Note, Deed of Trust, or the Property which
12 authorizes them, in fact, or as a matter of law, to collect Plaintiff's mortgage
13 payments or enforce the terms of the Note or Deed of Trust in any matter
14 whatsoever.
15

16 94. Plaintiff will suffer prejudice if the Court does not determine the rights
17 and obligations of the parties because: (1) Plaintiff will be denied the opportunity to
18 identify his true and current creditor/lender and negotiate with them; (2) he will be
19 denied the right to conduct discovery and have US BANK claims verified by a
20 custodian of records who has personal knowledge of the loan and all transactions
21 related to it; and (3) he will be denied the opportunity to discover the true amount he
22 still owes minus any illegal costs, fees and charges.

23 95. Due to the actual case and controversy regarding competing claims and
24 allegations, it is necessary that the Court declare the actual rights and obligations of
25 the parties and make a determination as to whether US BANK's claim against
26 Plaintiff is enforceable and whether it is secured or unsecured by a right, title or
27 interest in Plaintiff's Property.
28

1 96. Furthermore, the conduct of US BANK and CHASE and one or more
2 of the Doe Defendants, and each of them, as herein described, was so malicious and
3 contemptible that it would be looked down upon and despised by ordinary people.
4 Plaintiff is, therefore, entitled to punitive damages in an amount appropriate to
5 punish Defendants and to deter others from engaging in similar conduct.

6
7 **SECOND CASE OF ACTION**
8 **VIOLATION OF 12 U.S.C. § 2605 (RESPA)**

9 **[As Against J.P. Morgan Chase and one of more of the Doe Defendants]**

10 97. Plaintiffs hereby incorporate by reference each and every one of the
11 preceding paragraphs as if the same were fully set forth herein.

12 98. The Subject Loan is a federally regulated mortgage loan and is subject
13 to the federal Real Estate Procedures Act (RESPA) and its implementing regulation,
14 Regulation X.

15 99. On or about May 25, 2012, Plaintiff sent a Qualified Written Request,
16 ("QWR") via U.S. Post Certified Mail.

17 100. Plaintiff believes CHASE has received the QWR.

18 101. The QWR contained information to enable CHASE to identify
19 Plaintiff's loan and also contained requests for information of the loan, specifically
20 the identity and contact information of the holder in due course of Plaintiff's Note,
21 accumulated late fees and charges, and requested information to verify the validity
22 of the purported debt owed to US BANK and CHASE.

23 102. CHASE did not provide the contact information for the purported
24 holder of Plaintiff's Note, as required by § 2605, et seq.

25 103. Because the Mortgage Loan is subject to RESPA and Regulation X, all
26 Defendants were required to comply with Section 6 of RESPA appearing at 12
27 U.S.C. § 2605. Defendants violated Section 6 or Regulation X upon receipt of
28

1 Plaintiff's QWR by their actions including, but not limited to: (a) failure to make
 2 appropriate corrections in the account of the borrower, including the crediting of any
 3 late charges or penalties, and transmit to the borrower a written notification of the
 4 correction; and (b) failure to protect Plaintiff's credit rating upon receipt of
 5 Plaintiff's QWR by furnishing adverse information regarding payment to credit
 6 reporting agencies as defined in § 603 of the Fair Credit Reporting Act, 15 U.S.C. §
 7 1681(a).

8 104. Thus, CHASE violated 12 U.S.C. § 2605 and is subject to statutory
 9 damages, civil liability, penalties, attorneys' fees and actual damages. *See* 12
 10 U.S.C. § 2605. The actual pecuniary damages include, but are not limited to, the
 11 over calculation and overpayment of interest on Plaintiff's loan, the costs of
 12 repairing Plaintiff's credit, the reduction and/or elimination of Plaintiff's credit
 13 limits, costs associated with removing the cloud on his Property title and setting
 14 aside the trustee's sale, and attorneys' fees and costs, in an amount to be proven at
 15 trial, but in excess of \$75,000.00.

16 105. As a direct and proximate result of the violations of RESPA and
 17 Regulation X by CHASE, Plaintiff has suffered actual pecuniary damages, including
 18 but not limited to statutory damages, civil liability, and attorneys' fees, in an amount
 19 to be proven at trial.
 20

21 **THIRD CAUSE OF ACTION**
 22 **FOR VIOLATION OF 15 U.S.C. § 1692, ET SEQ.**

23 **[Against All Defendants and Doe Defendants]**

24 106. Plaintiffs hereby incorporate by reference each and every one of the
 25 preceding paragraphs as if the same were fully set forth herein.

26 107. Federal law prohibits the use of "any false, deceptive, or misleading
 27 representation or means in connection with the collection of any debt...including the
 28

1 false representation of...the character, amount, or legal status of any debt...and the
2 threat to take any action that cannot legally be taken..."

3 108. In illegally attempting to collect on Plaintiff's debt obligation in the
4 manner described herein, Defendants US BANK, as the purported assignee, and
5 BOA, as purported mortgage servicer:

6 (a) falsely represented the status of debt, in particular, that it was due and
7 owing to Defendant US BANK at the time the suit was filed;

8 (b) falsely represented or implied that the debt was owing to Defendant US
9 BANK as an innocent purchaser for value, when in fact, such an assignment had not
10 been accomplished;

11 (c) threatened to take action, namely engaging in collection activities that
12 cannot legally be taken by them; and

13 (d) attempted to collect on the promissory note under false pretenses;
14 namely that US BANK was assigned Plaintiff's debt when in fact they were not.
15

16 **FOURTH CAUSE OF ACTION**

17 **ACTUAL FRAUD (CAL. CIV. CODE §1572)**

18 **[Against All Defendants and Doe Defendants]**

19 109. Plaintiffs hereby incorporate by reference each and every one of the
20 preceding paragraphs as if the same were fully set forth herein.

21 110. *California Civil Code* § 1572 states that fraud exists when any of the
22 following acts and situations occur. Actual fraud consists in any of the following
23 acts, committed by a party to the contract, or with his connivance, with intent to
24 deceive another party:

- 25 a. The suggestion, as a fact, of that which is not true, by one
26 who does not believe it to be true; second, the positive
27 assertion, in a manner not warranted by the information
28 of the person making it, of that which is not true, though
he believes it to be true; third, the suppression of that

1 which is true, by one having knowledge or belief of the
2 fact; fourth, a promise made without having any intention
3 of performing it; or any other act fitted to deceive.

4 111. Plaintiff alleges Defendants are in direct violation of the code section
5 cited above, in that each of them, or their agents or assigns, made representations to
6 the Plaintiff regarding his ability to be able to pay the mortgage payment upon
7 adjustment of the interest rate when it reset after a designated period of time.
8 Plaintiff alleges each of the Defendants intentionally, maliciously and egregiously
9 took and undue fraudulent advantage of the Plaintiff who they knew was in a
10 financially distressed position and thus vulnerable to the types of misrepresentations
11 made to him by Defendants, or their agents or assigns. Plaintiff relied upon the
12 superior knowledge and expertise of Defendants and their agents or assigns.
13 Plaintiff relied upon the superior knowledge and expertise of Defendants and their
14 agents or assigns and believed the representations made to them as to his ability to
15 afford the mortgage payments upon adjustment, or his ability to refinance out of the
16 mortgage if he could not afford the increased payments.

17 112. Plaintiff alleges Defendants knew their statements to Plaintiff regarding
18 Plaintiff's ability to make the adjusted mortgage payments, or to refinance out of the
19 mortgage if was unable to make the adjusted payments, were false when they made
20 them. Defendants made the said false statements for the express purpose of
21 inducing Plaintiff to become legally obligated to Defendants for mortgage loans
22 based upon those false statements. The facts and identities of the Defendant
23 originators are known to all other Defendants, including the loan servicer and their
24 affiliates, as they as they all retain the original loan documents and maintain
25 computer based records of all the loan transactions at issue in this case.

26 113. As a direct and foreseeable consequence of the acts of Defendants
27 Plaintiff has been caused to suffer the loss of his home and equity, economic
28 damages, severe emotional distress, and damage to his credit rating. In addition, the
acts of Defendants are said to be intentional and committed with a conscious

1 disregard of the consequences of their acts or to the damages Plaintiff would suffer
2 as a consequence of their actions and punitive damages are appropriate to punish the
3 acts and deter such conduct by others.

4 **FIFTH CAUSE OF ACTION**
5 **NEGLIGENT MISREPRESENTATION**

6 **[Against All Defendants and Doe Defendants]**

7 114. Plaintiffs hereby incorporate by reference each and every one of the
8 preceding paragraphs as if the same were fully set forth herein.

9 115. Although some of the Defendants may have reasonably believed some
10 or all of the representations they made, as more fully set forth herein above, were
11 true, none of them had reasonable grounds for believing such representations to be
12 true at the time: (a) the representations were instructed to be made, as to those
13 Defendants instructing others to make representations, or (b) at the time the
14 representations were made, as to those Defendants making representations and those
15 Defendants instructing others to make the representations, or (c) at the time the
16 representations were otherwise ratified by the other Defendants.

17 116. In so doing, Defendants were not only acting as mortgage loan brokers
18 and selling agents, with respect to Plaintiff's loans, but as financial advisors. In so
19 doing, Defendants owed Plaintiff an affirmative duty to exercise due care in the
20 performance of their respective fiduciary and contractual duties, including the duty
21 to disclose and explain all material terms of the loan agreements.

22 117. These affirmative duties also prohibit Defendants from making any
23 misrepresentations to Plaintiff regarding the terms of or Plaintiff's ability to repay
24 the loan. As more fully described herein, the representations Defendants made to
25 Plaintiffs were not true.

26 118. Defendants intended Plaintiff to rely upon those misrepresentations.

27 119. As described herein, Plaintiff reasonably relied on those
28 representations.

120. By reason of Defendants' prominence and campaign of deception as to its business plans and the relationship of trust developed between each of the Defendants and Plaintiff, Plaintiff was justified in relying upon Defendants' representations.

121. As a result of relying upon the foregoing misrepresentations, Plaintiff entered into a mortgage contract with Defendant "WAMU".

122. As a result of Defendants' scheme described herein, Plaintiff cannot afford the mortgage. Further, as a result of the Defendants' scheme, Plaintiff cannot refinance or sell the Property without suffering a loss of Plaintiff's equity.

123. Without limiting the damages as described elsewhere in this Complaint, Plaintiff's damages as a result of the foregoing also include loss of equity in the Property, costs and expenses related to protecting Plaintiff, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs.

124. Plaintiffs are entitled to such relief as is set forth in this Cause of Action.

SIXTH CAUSE OF ACTION

BUS. AND PROF. CODE SECTION 17200, ET.SEQ.

[Against All Defendants and Doe Defendants]

125. Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

126. Defendants' conduct, for the reasons stated herein, is in direct violation of 12 U.S.C. § 2605(e), et seq. and 15 U.S.C. 1692, et seq.

127. Defendant' conduct, for the reasons stated herein, is in direct violation of *Cal. Civil Code* section 1572; and *Cal. Penal Code* section 532(f)(a)(4).

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128. *Cal. Bus and Prof. Code* section 17200, et seq., prohibits acts unfair competition, which means and includes any unlawful, unfair or fraudulent business act and conduct which is likely to deceive and is fraudulent in nature.

129. As more fully described above, Defendants' acts and practices are unlawful, unfair, and fraudulent. This conduct is ongoing and continues to this date.

130. Defendants engage in unfair, unlawful¹¹ and fraudulent business practices with respect to mortgage loan servicing, and related matters by, among other things:

- (a) executing and recording false and misleading documents.¹²
- (b) executing and recording documents without the legal authority to do so;
- (c) failing to disclose the principal for which documents were being executed and recorded in violation of *Cal. Civ. Code* section 1095;
- (d) demanding and accepting payments for debts that were non-existent;
- (e) violating the Security First Rule;
- (f) reporting payments as late to credit bureaus without the legal right or authority to do so;
- (g) acting as a beneficiary without the legal authority to do so, and;
- (h) other deceptive business practices as described herein.

¹¹ "Unlawful" acts or practices are those forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, or court-made. *Saunders v. Superior Court*, 27 Cal.4th 832 (1994); *Hewlett v. Squaw Valley*, 54 Cal.4th 499 (1997).

¹² Defendants' recording of the Assignment of Deed of Trust violates *Cal. Penal Code* section 532(f)(a)(4), which prohibits any person from filing a document related to a mortgage loan transaction with the county recorder's office which that person knows to contain a deliberate misstatement, misrepresentation, or omission. The facts demonstrate that Defendants have committed mortgage fraud by filing the Assignment of Deed of Trust with the county recorder's office with the knowledge that the document contained a deliberate misstatement, misrepresentation, or omission of fact.

1 131. As more fully described above, Defendants' acts and practices are
2 likely to deceive members of the public.

3 132. As more fully described above, Defendants' acts and practices are
4 unfair and the harm caused by the conduct outweighs any benefits that the conduct
5 may have.

6 133. Plaintiff alleges that by engaging in the above described acts and/or
7 practices as alleged herein, Defendants violate several laws including *Cal. Bus. and*
8 *Prof. Code* section 17200, et. seq. and must be required to disgorge all profits
9 related to their unfair, unlawful, and deceptive business practices.

10 134. Plaintiff alleges that Defendants' misconduct, as alleged herein, gave
11 Defendants an unfair competitive advantage over their competitors. The scheme
12 implemented by Defendants is designed to defraud California consumers and enrich
13 the Defendants.

14 135. The foregoing acts and practices have caused substantial harm to
15 California consumers including Plaintiff.

16 136. By reason of the foregoing, Defendants have been unjustly enriched
17 and should be required to make restitution to Plaintiff and other California
18 consumers who have been harmed, and/or be enjoined from continuing in such
19 practices pursuant to *Cal. Bus. and Prof. Code* sections 1720 and 17204.

20 137. As a direct and proximate result of the actions of Defendants, and each
21 of them, stated above, Plaintiffs have been injured in that a cloud has been placed
22 upon title to Plaintiffs' Property and Defendants have failed to remove this cloud
23 from Plaintiffs' title.

24 138. Plaintiffs are entitled to an order compelling US BANK, CHASE, and
25 any other Defendants claiming an interest in and to the Property to take any and all
26 actions necessary to remove the cloud they have placed upon Plaintiffs' title and an
27 order enjoining such Defendants from taking such actions again in the future.
28

SEVENTH CAUSE OF ACTION
CANCELLATION OF VOID CONTRACT
CAL. CIVIL CODE §§1670.5, 1667, 1689, 3412;
CAL FIN. CODE §22302

[Against All Defendants and Doe Defendants]

139. Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

140. As more fully set forth above, the loans marketed, originated, sold or serviced by the Defendants were unconscionable for the following reasons: 1) the loans were predatory in nature in that they were targeted to those lease able to understand the detrimental terms in the loans; 2) the loans contained terms for the adjustable increase in the amount of interest to be paid, and by extension, the amount of the monthly mortgage payments that were to be paid over the terms of the loans, without regard to the ability of Plaintiff to be able to pay the increased payments upon adjustment, thus setting the borrowers up for likely or certain default and inevitable foreclosure in contravention of government policies favoring home ownership and disfavoring foreclosure; 3) loans that adjusted after a fixed length of time were deceptive because of the initial payments of the loan caused the borrower to feel comfortable in making the loan, and the Defendants did not advise, sufficiently or at all, the ramifications of the payment adjustment which would occur at the "Change Date"; and 4) the substantial increase in the loan balances caused by the pay option ARMs not only increased the monthly payments, but also stripped all available equity from the Plaintiff's home (as did the negative amortization loan).

141. Such unconscionable acts were and are in violation of California Financial Code §§4973 and 50204, as well as California Civil Code §§1596, 1708 and 1709, as the loans were injurious not only to Plaintiff, but also to the public at large, and were deceptive for the reasons stated above.

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142. It was reasonably foreseeable by Defendants such egregious contract terms would cause a default of the loan, resulting in economic injury to Plaintiff, including loss of his home improvements, monetary losses such as relocation costs, damage to his credit rating, and emotional distress associated with the impending foreclosure.

143. Plaintiff also contends his mortgage loan was illegal and, therefore, void and unenforceable, as it was issued in violation of numerous California statutes pursuant to Civil Code §1667. Plaintiff alleges Defendants violated the following statutes: California Civil Code §§ 1572, 1596, 1670.5, 1677, 1708, 1709 and 171; Business and Professions Code §17200, et seq. and 17500 et seq.; and Financial Code §§ 4970 et seq., 22000, et seq., and 50000, et seq.

144. Based upon the numerous violations of California law, Plaintiff seeks cancellation of the loan agreement as void from formation. Based on such cancellation, Plaintiff seeks restitution of all monies paid pursuant to the contract, including earnest money, all closing costs, all principal and interest and taxes paid prior to default or foreclosure of the Property. Plaintiff offers and is willing to restore any consideration back to the Defendants that may be due after deduction of any offsets for the damages sustained by Plaintiff as may be determined at time of trial by the finder of fact.

EIGHTH CAUSE OF ACTION- ACCOUNTING

[Against All Defendants and Doe Defendants]

145. Plaintiffs hereby incorporate by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

146. US BANK and CHASE have held themselves out to be Plaintiff's creditor and mortgage servicer. As a result of this purported relationship with

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///

1 Plaintiff, said Defendants have a fiduciary duty to Plaintiff to properly account for
2 payments made by Plaintiff.¹³

3 147. As a result of the aforementioned fraudulent and illegal conduct,
4 Plaintiff paid US BANK and/or CHASE his mortgage payments for a period of
5 approximately four and a half years. However, for the reason stated herein, none of
6 this money was actually owed to US BANK and/or CHASE. For that reason, these
7 monies are due to be returned to Plaintiff in full.

8 148. The amount of money due from the Defendants to Plaintiff is unknown
9 to Plaintiff and cannot be ascertained without an accounting of the receipts and
10 disbursements of the aforementioned transactions. Plaintiff is informed and believes
11 and thereon alleges that the amount due to him exceeds \$75,000.00.

12 WHEREFORE, Plaintiffs pray as follows:

13 **NINTH CAUSE OF ACTION- QUASI CONTRACT**

14 **[Against All Defendants and Doe Defendants]**

15 149. Plaintiffs hereby incorporate by reference each and every one of the
16 preceding paragraphs as if the same were fully set forth herein.

17 150. US BANK and/or CHASE demanded monthly mortgage payments
18 from Plaintiff and continued to collect payments from Plaintiff. Plaintiff reasonably
19 relied upon US BANK and/or CHASE's assertion that they are entitled to the
20 benefit of Plaintiff's mortgage payments.

21 151. US BANK and/or CHASE knowingly accepted payments and retained
22 them for their own use knowing that US BANK and/or CHASE did not acquire an
23

24
25 ¹³ To state a cause of action for accounting, a plaintiff must allege the existence of a fiduciary
26 relationship, or accounts so complicated that an ordinary legal action demanding a fixed sum is
27 impracticable. 5 Witkin, Cal. Proc. 4th (1997) Pleading, section 775, p. 233. The elements for a
28 claim for accounting are: 1) fiduciary relationship or other circumstances appropriate to the
remedy; and 2) a balance due from the defendant to the plaintiff that can only be ascertained by an
accounting. See Witkin, California Procedure, Pleadings, section 776, p. 233 (4th ed.).

1 interest in Plaintiff's Note, such that they could accept or keep Plaintiff's payments.
2 It would be inequitable for US BANK and/or CHASE to retain the payments it
3 received from Plaintiff which it did not have legal authority to collect. The
4 equitable remedy of restitution when unjust enrichment has occurred is an obligation
5 created by the law without regard to the intention of the parties, and is designed to
6 restore the aggrieved party to their former position by return of the thing or its
7 equivalent in money.

8 152. Section 23 of the Deed of Trust states that: "Upon payment of all sums
9 secured by this Security Instrument, Lender shall request Trustee to recovery the
10 Property and shall surrender this Security Instrument and all notes evidencing debt
11 secured by this Security Instrument to Trustee. Trustee shall reconvey the Property
12 without warranty to the person or persons legally entitled to it." US BANK and/or
13 CHASE have been unjustly enriched by collecting monthly payments from Plaintiff
14 when it has no interest in the Note.
15

16 153. Plaintiff seeks restitution for any payments he made to US BANK
17 and/or CHASE that were not paid to the lender or beneficiary, if any.

18 **TENTH CAUSE OF ACTION- PRELIMINARY INJUNCTION**

19 **[Against All Defendants and Doe Defendants]**

20 154. Plaintiffs hereby incorporate by reference each and every one of the
21 preceding paragraphs as if the same were fully set forth herein.

22 155. To maintain the status quo between the parties while the matter is
23 pending, Plaintiff seeks an order from the Court to retain title to the subject real
24 Property and to remain in actual possession of the premises, by enjoining
25 Defendants and/or their agents from seeking to evict or eject Plaintiff from the
26 Property. Plaintiff further seeks an order from the Court staying payment on the
27 disputed mortgage.
28

1 6. For an order compelling Defendants to disgorge all amounts wrongfully
2 taken by them from Plaintiff and returning the same to Plaintiff's interest thereon at
3 the statutory rate from the date the funds were first received from Plaintiff;

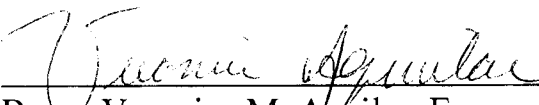
4 7. For the costs of suit incurred herein;

5 8. For reasonable attorneys' fees incurred; and

6 9. For such other and further relief as the Court may deem proper.

7 Dated: November 20, 2012

8 THE LAW OFFICES OF VERONICA M. AGUILAR

9
10 

11 By: Veronica M. Aguilar, Esq.
12 Attorney for Plaintiffs

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE.

I have read the foregoing: **VERIFIED COMPLAINT FOR DAMAGES, EQUITABLE RELIEF** and know its contents.

I am a party to this action. The matters stated in the foregoing documents are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

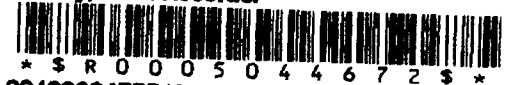
Executed on 11/20, 2012 at Orange, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


MICHAEL YOUNESSI

EXHIBIT "A"

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



120

2012000455543 8:00 am 08/09/12

117 408 A32 2

0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

RECORDING REQUESTED BY
CALIFORNIA RECONVEYANCE COMPANY

AND WHEN RECORDED MAIL TO

JPMC Records Center
Document Intake Department
700 Kansas Lane
Monroe, LA 71203

Space above this line for recorder's use only

Trustee Sale No. 745155CA Loan No. 3013464502 Title Order No. 100713817-CA-MAI

CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which hereby acknowledged, the undersigned, by these presents does convey, grant, sell, assign, transfer and set over the described Deed of Trust without recourse, representation or warranty, together with all right, title and interest secured thereby, all liens and any rights due or become due thereon to **U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association as Trustee as successor by merger to LaSalle Bank, National Association as Trustee for WaMu Mortgage Pass-Through Certificates Series 2007-OA4 Trust, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).**

Said Deed of Trust made by **MICHAEL YOUNESSI, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY**, and recorded on 04-02-2007 as Instrument # 2007000210328 in Book N/A, Page N/A, in the office of the ORANGE County Recorder, CALIFORNIA.

Property more commonly known as: 1611 CLIFF DRIVE, , NEWPORT BEACH, CA 92660
A.P.N. 049-221-08

DATE: 08/08/2012

JPMorgan Chase Bank, National Association, as attorney-in-fact for the Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank



Colleen Irby, Vice President

Trustee Sale No. 745155CA Loan No. 3013464502 Title Order No. 100713817-CA-MAI

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On 8/8/2012 before me, CARLA DODD Notary Public", personally appeared COLLEEN IRBY, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carla Dodd (Seal)

